United States Court of Appeals

for the Second Circuit

APPELLANT'S PETITION FOR REHEARING

76-7458

B

P/S

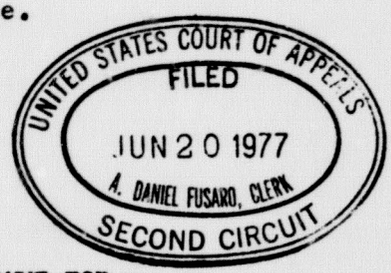
UNITED STATES COURT OF APPEALS
for the Second Circuit

DOCKET NO. 76-7458

CHARLES MERRILL MOUNT,
Plaintiff-Appellant,

v.

BOOK OF THE MONTH CLUB, INC.,
Defendant-Appellee.



PETITION OF THE APPELLANT CHARLES MERRILL MOUNT FOR REHEARING PURSUANT TO RULE 40

ISSUES PRESENTED FOR REHEARING

BY DECISION dated May 19, 1977, the Circuit Court affirmed dismissal by the lower court of the first cause of action and part of the second cause of action by reason of statutory limitation. In the first cause of action the court hypothecized that plaintiff instantly should have brought proceedings for copyright infringement in January 1956, and he would, through Discovery, have established the infringer's means of access. Presented here is evidence previously unknown which demonstrates plaintiff was forestalled by intervention of his publisher. Tolling of the statute which accrued through concealment of access therefore makes this first cause of action timely.

The Circuit Court has affirmed that the second cause of action is barred by statutory limitation only in part. Plaintiff here demonstrates by quotation from precedent matters that the two separate parts created by that decision are in reality a single continuous process which is not divisible. Exploitation of the infringing book by defendant is a single act described and governed by a single contract and a single grant of rights. Since the court has determined that this exploitation falls into a time period not barred by statute, by the rule the entire second cause of action is not barred.

THE FIRST CAUSE OF ACTION

THE CIRCUIT COURT failed to find tolling of the statute because "plaintiff knew in or about January 1956 of the publication of McKibbin's pamphlet; he could tell if he had a potential infringement claim by comparing the two works and noting the similarities; if he thought actual access by McKibbin before January 1956 had to be proved, he could have found out through discovery whether and how McKibbin had seen the Mount book. That type of knowledge, available to plaintiff in 1956, was enough to start limitations running at that time ...." By the court's own yardstick, therefore, were such information not available to plaintiff limitations did not start running.

Circumstances by which plaintiff was barred from acquiring "that type of knowledge" already have been sketched in part before the District Court (paragraph numbered 12, plaintiff's answering affidavit sworn to March 12, 1976). Annexed to the COMPLAINT filed with District Court is the certificate of copyright register which shows that on signing contract with plaintiff (in 1954 an unknown 25 year-old scholar) Norton had vested the copyright in itself. Annexed to the same Complaint, as EXHIBIT B, is the document by which, October 19, 1965, copyright was set over unto plaintiff. Until that date plaintiff had standing before a court only upon consent of his publisher. The action hypothecized by the Circuit Court cannot apply to this cause of action.

Concerning the infringing pamphlet, December 12, 1955, or thirty-

four days after publication of plaintiff's book (November 8, 1955) the Director of the Boston Museum of Fine Arts personally wrote to the President of plaintiff's publishers. The high level at which this delicate matter was handled itself is significant.

> ... our catalogue was completed last summer[1] and went to press in September together with Mr. McKibbin's checklist of Sargent's portraits. It is curious how often an independent but simultaneous interest in a subject arises. Such has been the case between your firm and the museum regarding Sargent.[2]
>
> We find that Mr. Mount has included in his list three hitherto unknown portraits, those of Allouard-Jouan, Jean [illegible] Kieffer and Rene Kieffer. In order to make our che[illegible]st complete, we beg[3] your permission to include those three paintings, with the explicit understanding that W.W.Norton & Company will be given full credit for this permission.

This mischievous letter, herewith annexed as EXHIBIT A, nowhere gave explanation how the McKibbin pamphlet, which, it is claimed, "went to press in September", demonstrated prior access to plaintiff's work published two months later on November 8. Such evasive and disingenuous letter could not have been written were McKibbin himself not privy to it, and he must have given explanation to the museum concerning how he secured access to plaintiff's work "last summer". The letter

---

1. By volunteering that the museum catalogue was "completed" before publication of plaintiff's volume in November access is denied. Surely the matter had been considered by lawyers for the museum.

2. The court is asked to consider the purpose behind this claim of "independent but simultaneous interest". Had it not seemed overly fortuitous to the museum?

3. As scholarship such request is monstrous. McKibbin and the museum were prepared to publish as genuine and authentic works no one but plaintiff ever had seen. Obviously plaintiff's word carried overwhelming authority.

constitutes fraudulent concealment. Its assertions that McKibbin's pamphlet was "completed last summer" must be examined in context of McKibbin's own letter dated September 25, 1965 (annexed as EXHIBIT D to plaintiff's affidavit in opposition before the District Court sworn to February 20, 1976):

> It was one of Mount's misfortunes[4] that Pamela Taylor, Francis' wife, got hold of the proofs of his SARGENT, which had been submitted by Norton's for selection as a Book-of-the-Month ... for which group she was a 'reader' (.) Of course she stopped that.[5]

Immediately it is seen that fraudulent concealment has been practiced for more than two decades, and together by BOOK OF THE MONTH, McKibbin, and the Boston Museum. Defendant's papers nowhere deny that McKibbin had access, which in any case is proved by the text to which he put his own name. To separate the responsibility of those three parties to the conspiracy seems impossible. Each was aware of the acts of the others. BOOK OF THE MONTH not alone gave McKibbin access, but refused the "Best Biography" of 1955 on the basis of his animus. This was hardly a disinterested act, nor was it in the normal course of business.

On receipt of the Boston Museum's letter Norton replied without consulting or informing plaintiff (EXHIBIT C):

---

4. The phrase "It was one of Mount's misfortunes" is an extraordinarily revealing psychologic slip. Because of this "misfortune" for twenty years McKibbin made claim that he was an "expert" on Sargent, and, ultimately, used this spurious claim to launch the libel that plaintiff was forging paintings with his own hands. The same mentality is revealed by the two acts.

5. Admission that plaintiff's book was refused by BOOK OF THE MONTH not on the merits. Plaintiff's book was listed by THE NEW YORK TIMES in its annual survey as "Best Biography" of 1955. The very strongest animus must have been at work inside BOOK OF THE MONTH.

> ... By all means proceed with the inclusion of the three Sargent portraits mentioned in your letter in order to make complete the Museum catalogue.
>
> And since the source of the information comes from our recent publication, the usual mention of title, author, and publisher will be appreciated.

Reference to its letter demonstrates that the Boston Museum had not offered to credit plaintiff as author of the Norton book. This most unusual omission again suggests the intense animus that existed. The museum made no response. Instead the museum determined that it would not observe the stipulation of credit made by Norton. All copies of the McKibbin pamphlet on sale at the museum, and those presently available in The New York Public Library, The Frick Art Reference Library, The Brooklyn Public Library, The Victoria & Albert Museum (London), The Tate Gallery (London), carry neither acknowledgement nor credit to plaintiff.

A month later, on first seeing the McKibbin pamphlet, plaintiff was appalled to discover the entire text and the whole of the catalogue were product of his own labors. The sequence of thought, interpretations, quoted materials, and key words, everywhere followed plaintiff's book. McKibbin's pamphlet was a hastily disguised plagiary of the whole.[6] On making known to Norton that the entirety of his labors had been plagiarized, plaintiff received heated telephonic reply from Robert A.

---

6. Needless to say, it is McKibbin's only publication. This fact is eloquent beside 200 presently standing to plaintiff's credit.

Farlow, Vice President of the company, and also editor responsible for plaintiff's manuscript. A letter, signed either by Farlow or Storer Lunt, Norton's President, later informed plaintiff dryly that Norton had granted rights and were writing only to inform of the action taken. Another letter ended "this is final". In effect, Norton refused to contemplate the reality of the situation and forestalled any action by the author whose work-product it controlled.[7]

In June 1974, by the letter herewith annexed as EXHIBIT E, plaintiff made request of Norton for "xerox xopies of your exchanges with the Boston Museum, and a copy of your final agreement with them concerning the acknowkedgement." With reply dated July 12, 1974, hereto annexed as EXHIBIT F, Norton conveyed the two letters of 1955 discussed above and made known that these were "the entire correspondence".

These previously unknown documents show that (1) the Boston Museum fraudulently concealed a guilty knowledge of McKibbin's access; (2) plaintiff was forestalled from taking the steps on which this court has determined the tolling of statute; (3) plaintiff was not lacking in diligence nor effort to protect his labors from infringement; (4) the publisher acted imprudently before examining the infringing pamphlet; (5) the publisher failed to inform plaintiff in good time, (6) rights ceded to the Boston Museum were voided when stipulated credit was not given.

Plaintiff must not be penalized for the imprudent acts of an

---

7. Concerning these letters from Norton see APPENDIX A.

overreaching publisher. By the court's own yardstick limitations did not start running until 1974.

THE SECOND CAUSE OF ACTION

THE COURT HAS AFFIRMED by reference to Rosette v. Rainbo Record Mfg. Corp., 354 F. Supp. 1183, 1194 (S.D.N.Y. 1973, Gurfein, J.) affirmed per curiam, 546 F. 2d 461 (2d Cir. 1976) that "Any infringement more than three years before the commencement of the action ... is barred by limitations ...." After examining the facts the court has made determination that the infringing volume was still exploited by Book of the Month in a time period not barred by limitations. On February 16, 1973, by invoice numbered 485 (hereto annexed as EXHIBIT G) the defendant made sale of no fewer than 116 copies of the infringing work. Plaintiff's action having been commenced by filing of complaint in District Court December 29, 1975, the statutory three year period had not expired. Clearly this cause of action cannot be barred by statutory limitation.

The court has been ensnared by a trap willfully laid for it by defendant's attorneys, who deviously divide exploitation of the infringing book into two parts. No authority for this exists in the cited case, and no precedent exists in law. The statute (17 U.S.C., Section 115 (b)) asks no more than that action be "commenced within three years after the claim accrued". This requirement was satisfied by plaintiff. The statute does not divide the accrual of a claim into

separate claims accruing by manufacturing, advertizing, selling by direct mail, selling by bookstores, or selling by television. Under the statute as written a claim once accrued is a single cause of action embracing the whole exploitation of any work infringing a copyright.

It is perhaps misleading that Rosette v. Rainbo Mfg. Corp dealt with publication of 33 individual musical compositions, each with a separate publishing history. Judge Gurfein thus was obliged to find "Any infringement more than three years before the commencement of the action is barred by limitation ...." By this rule he usefully separated those compositions which were made use of by the infringer in a period that was time-barred from those which were not. At no point does Judge Gurfein divide one composition into a time-barred and non-time-barred parts. Each cause of action is a single event.

In its turn, affirming Judge Gurfein, the Circuit Court concluded:

> ... Judge Gurfein found that of the 33 compositions at issue, at least 11 had been recorded, manufactured, and continuously sold by plaintiff and her company before they obtained a statutory copyright for them; as to 5 composition, it was uncertain whether a statutory copyright had been obtained before or after their commercial release as songs ....

Nowhere is any composition divided into parts which are time-barred and not-time-barred, exploitation being a single act under the statute, respecting which claim either accrued or did not accrue.[8]

---

8. It is to be assumed that the authors of the statute were aware that books are rarely sold entirely on one day but frequently have a life "in print" (that is, in bookstores and otherwise available for purchase) of several years.

In the matter before this court facts are even more conclusive. April 23, 1970, defendant sent a letter (annexed hereto as EXHIBIT H) to the company from whom it acquired rights[9] in which all the steps envisaged for this single transaction of exploitation are outlined:

> We shall manufacture editions of this book for our requirements and we understand that you will permit us to use your letterpress text plates or a final set of offset negatives for the text, dies and jacket plates ... It is understood that we may distribute copies ... as gifts or premiums and/or dividends to our regular subscribers in the usual course of our business. It is also understood that we may use the book for premium or gift purposes in connection with our advertizing, and other methods of securing new members ... We agree not to remainder any copies ... without first obtaining your permission to this effect. In the case of any copies remaindered, no royalty will of course be due on such copies. However, if we are able to negotiate a sale above cost we shall turn over to you the profit so made.

The sale of 116 copies made February 16, 1973, is clearly foreseen as a "remainder" sale, and, indeed, is unigorm with the standard practice of Book of the Month. The same invoice shows not only this infringing book but six other titles for a total of 5,899 books sold as "remainders" to the same customer on that day. It would be an absurdity to claim that each of those volumes existed in a dimension of time-barred and non-time-barred parts, since remainder sales are the consistent last act in the single process of commercial exploitation. Moreover the 116 copies of the infringing book is the smallest number of copies for any of the seven listed, proving it to have been a more satisfactory and profitable publishing venture.

---

9. If "rights" can be said to exist in a plagiary.

Exploitation of the infringing book by defendant was a single all-embracing act from purchase of "rights" to final sale of laggard copies. All was foreseen and specified in the letter sent by Book of the Month April 23, 1970, before even one of the infringing volumes existed. No authority exists in the statute, nor in prior case law, for divising this single infringing act into a part which is time-barred and a part which is not-time-barred. Since this single continuous transaction fell into a period not barred by statutory limitation, and that is the determination of this court, this single cause of action cannot be time-barred.

CONCLUSION

Plaintiff's prayer for rehearing of this matter pursuant to Rule 40 should be granted.

RESPECTFULLY SUBMITTED:

CHARLES MERRILL MOUNT
Plaintiff pro se
6923 Williamsburgh Boulevard
Arlington, Virginia, 22213
(703) 534-0239

DATED: ARLINGTON, VIRGINIA
June 18, 1977

APPENDIX A

An unfortunate feature of this petition is that plaintiff's publisher, W.W.Norton & Co., has not provided several pieces of correspondence mentioned. On June 7, 1977, petitioner made a second specific request by letter hereto annexed (APPENDIX EXHIBIT 1):

> ... I well recall a very heated telephone conversation with Bob Farlow, who must have thought me a lunatic for believing my work had been stolen. Afterall - how could anyone have seen my manuscript in Norton's offices? Yet I was claiming to Farlow and others that my text was being used for a pamphlet published in Boston.
>
> Beyond the letters you send me today, Norton did send letters on this subject to me direct. These had the effect of choking off my efforts to stop the Boston pamphlet. One ended "this is final". Another said that they were writing only to inform me of action already taken ....

By letter dated June 10, 1977 (APPENDIX EXHIBIT 2) the publisher stated: "... we do not have anything further of any date concerning this matter."

Petitioner asks the court to consider whether this is not another example of the enormous power exercized within the publishing world by BOOK OF THE MONTH. Placed in an invidious situation, would any publisher not have responded in the same discrete way? When naked power of this sort is exercized against a scholar whose work already has been stolen and published under other names, what becomes of the

theoretic equal justice that should cloak this humble petitinner?

Charles M. Mount
230 Beach 146 Street
Neponsit, New York, 11694

June 7, 1977

Mr. W.H. Onysko
W.W.Norton & Co., Inc.
500 Fifth Avenue
New York, N.Y., 10036

Dear Mr. Onysko,

Yours of May 31 has reached me this morning and I am grateful for your trouble in my behalf. When I did not hear from you in time for the June 2 filing date set by the Rules of the United States Circuit Court I made application for a n extention, which, despite being occupied all that day by the SST case, was granted me by Judge Mansfield. Therefore we still have four days in which to locate the necessary correspondence. The relevant passage of the decision, handed down May 19, 1977, and written by Judge Davis of the Circuit Court of Appeals is this:

> Mount first says that tolling occurred because he did not discover until 1974 that McKibbin had had access to his manuscript through Mrs. Taylor. But plaintiff knew in or about January 1956 of the publication of McKibbin's pamphlet; he could tell if he had a potential infringement claim by comparing the two works and noting the similarities; if he thought actual access by McKibbin before January 1956 had to be proved, he could have found out through discovery whether and how McKibbin had seen the Mount book. That type of knowledge, available to plaintiff in 1956, was enough to start limitations running at that time ....

This passage ignores that Norton was copyright holder, and, as

(APPENDIX EXHIBIT 1)

such, forestalled any independent action on my part. I well recall a very heated telephone conversation with Bob Farlow, who must have thought me a lunatic for believing my work had been stolen. Afterall - how could anyone have seen my manuscript in Norton's offices? Yet I was claiming to Farlow and others that my text was being used for a pamphlet published in Boston.

Beyond the letters you send me today, Norton did send letters on this subject to me direct. These had the effect of choking off my efforts to stop the Boston pamphlet. One ended "this is final". Another said that they were writing only to inform me of action already taken. All of it was dated in the last months of 1955 and the first months of 1956. Could I please have copies of all my letters and the replies from Norton in that time period, please? And since there is a time limit set by the court, could I, most gently, ask for haste?

Most sincerely,

W · W · NORTON & COMPANY · INC / Publishers
WILLIAM H. ONYSKO · Executive Vice President and Treasurer

NEW YORK 10036
500 FIFTH AVENUE
CABLES · SEAGULL · NEW YORK
TELEX 12-7634
TEL. (212) 354-5500

June 10, 1977

Mr. Charles M. Mount
230 Beach 146 Street
Neponsit, New York 11694

Dear Mr. Mount:

We have gone through our files for a third time looking for additional correspondence concerning the Boston Museum's Sargent pamphlet and we do not have anything further of any date concerning this matter. The pieces we sent you are all that we have.

Sincerely yours,

W. H. Onysko

WHO:sd

(APPENDIX EXHIBIT 2)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CHARLES MERRILL MOUNT, Plaintiff, -against- BOOK OF THE MONTH CLUB, INC., Defendant.	DOCKET NO. 76-7458

STATE OF VIRGINIA)
) ss.:
COUNTY OF FAIRFAX)

CHARLES MERRILL MOUNT being duly deposed states: that I am over 18 years of age and reside at 6923 Williamsburgh Boulevard, Arlington, Virginia, in Fairfax County, and that upon June 18, 1977, I duly served the annexed PETITION FOR REHEARING PURSUANT TO RULE 40 upon Mr. Paul J. Newlon, attorney for defendant, at 345 Park Avenue, New York, N.Y., 10022, by depositing a true copy of same enclosed in a post-paid properly addressed wrapper and entrusting it to an official United States Post Office within the State of Virginia.

Charles Merrill Mount

CHARLES MERRILL MOUNT

Commonwealth of Virginia
County of Fairfax

Sworn to before me this
18th day of June, 1977.

NOTARY PUBLIC

My commission expires June 23, 1980

MUSEUM OF FINE ARTS

ICE OF THE DIRECTOR

BOSTON 15, MASSACHUSETTS

December 12, 1955

Mr. Storer B. Lunt, President
W. W. Norton & Company
55 Fifth Avenue
New York, New York

Dear Mr. Lunt:

I had a talk this morning with Mr. Walter Whitehill regarding our forthcoming publication in connection with our exhibition, SARGENT'S BOSTON, which will be held at the Museum of Fine Arts in January.

You are no doubt aware that an exhibition of this kind requires months of preparation. As it happens, our catalogue was completed last summer and went to press in September together with Mr. McKibbin's checklist of Sargent's portraits. It is curious how often an independent but simultaneous interest in a subject arises. Such has been the case between your firm and the Museum regarding Sargent.

We find that Mr. Mount has included in his list three hitherto unknown portraits, those of Allouard-Joyan, Jeanne Kieffer and René Kieffer. In order to make our checklist complete, we beg your permission to include these three paintings, with the explicit understanding that W. W. Norton & Company will be given full credit for this permission.

I would greatly appreciate your kindness in replying by return mail, so that our printer will not need to hold his presses unduly.

With many thanks for your consideration,

Very sincerely yours,

Perry T. Rathbone
Director

PTR:FMR

A

file Travel

December 13, 1955

OFF

Mr. Perry T. Rathbone
Director
Museum of Fine Arts
Boston 15, Mass.

Dear Mr. Rathbone:

My thanks for your gracious letter of December 12th. By all means proceed with the inclusion of the three Sargent portraits mentioned in your letter in order to make complete the Museum Catalogue.

And since the source of the information comes from our recent publication, the usual mention of title, author, and publisher will be appreciated.

Sincerely yours,

SBL:mr

P.S. Please note that the name Allouard-Jonan, as mentioned in your letter, should be spelled Allouard-Jouan.

B

W · W · NORTON & COMPANY · INC · 55 FIFTH AVENUE · NEW YORK 10003 ·

WILLIAM H. ONYSKO · *Treasurer*

July 12, 1974

Mr. Charles M. Mount
425 Beach 133 Street
Belle Harbor, New York 11694

Dear Mr. Mount:

We send you herewith the entire correspondence with the Museum of Fine Arts concerning the three Sargent portraits they included in their exhibition catalog in late 1955.

Sincerely,

W. H. Onysko

WHO:sd
encs.

C

Charles M. Mount
230 Beach 146 Street
Neponsit, New York, 11694

May 24, 1977

Mr. William H. Onysko
W.W.Norton & Co., Inc.
500 Fifth Avenue
New York, N.Y., 10036

Dear Mr. Onysko,

In the summer of 1974 you very kindly provided me with xerox copies of correspondence between Norton and the Boston Museum of Fine Arts concerning a requested permission to employ certain pictures from my published catalogue of the works of John Singer Sargent. The letters are before me, and are dated December 12 and 13, 1955. Somewhere in that same time span I received a heated communication from Norton to the effect that Norton had granted rights "and this is final".

In its decision dated May 19, 1977, in a copyright infringement action, the Circuit Court has questioned why I did not bring proceedings for copyright infringement in January 1956. The Court finds, flat out, that I <u>should</u> have done so. I am obliged to submit a brief on this single point, and have it ready and printed, before June 2. Could you please get a copy of that "final" letter to me hurriedly, please?

Charles M. Mount
425 Beach 133 Street
Belle Harbor, New York, 11694

June 22, 1974

Copyright Department
W.W.Norton & Co.
55 Fifth Avenue
New York, N.Y.

Dear Sirs,

About the end of 1955 it was discovered that the Boston Museum of Fine Arts was about to publish a pamphlet entitled SARGENT'S BOSTON, which infringed the copyright of my book JOHN SINGER SARGENT, published by Norton. As copyright holder of record therefore W.W.Norton enetered into an agreement with the Boston Museum under which an acknowledgement to me was to appear in every copy of the museum pamphlet.

It transpires that this agreement was never observed by the museum and there is a present possibility of infringement proceedings since the copyright of JOHN SINGER SARGENT now belongs to me.

May I have the courtesy of xerox copies of your exchanges with the Boston Museum, and a copy of your final agreement with them concerning the acknowledgement.

Most sincerely,

Charles M. Mount

E

INVENTORY COPY

Book-of-the-Month Club, Inc. 280 Park Avenue, New York, N.Y. 10017

INVOICE #: 485

Harboro Books
205 Moonachie Road
Moonachie, New Jersey 07074
Att: Mr. Fred Weitzen

RESALE #:

DATE: 2-16-73

	TERMS: net 30 Days	PRICE	TOTAL
	PURCHASE ORDER # 7347		
977	CHINA RETURNS	@$ .50	$ 488.50
404	ENCOUNTERS WITH STRAVINSKY	1.10	444.40
525	FRENCH LIEUTENANTS WOMAN	.87	456.75
962	LIVING WELL IS THE BEST REVENGE	.25	240.50
116	J.J. SAUNDERS: PAINTING, DRAWINGS, WATERCOLOR	4.75	551.00
2,633	SILENT SPRING	1.00	2,633.00
282	UP THE SANDBOX	.28	78.96
			$ 4,893.11

G

Book-of-the-Month Club, Inc., 280 Park Avenue, New York, N.Y. 10017

April 23, 1970

Miss Virginia Olson
Harper & Row, Publishers
49 East 33 Street
New York, N.Y. 10016

Dear Virginia:

This is to confirm that you have granted us exclusive book club rights to J. S. SARGENT: PAINTINGS, DRAWINGS, WATERCOLORS by Richard Ormond for a period of three years from the above date.

We plan to sell the book through the Book-of-the-Month Club News, or by a special mailing, and/or other promotional media, either as a substitute for or in addition to our regular book-of-the-month selection. Purchase of the book entitles members to credit towards book-dividends.

We shall manufacture editions of this book for our requirements and we understand that you will permit us to use your letterpress text plates for a final set of offset negatives for the text, dies and jacket plates for which we agree to pay you a royalty and plate rental fee of 10% of our domestic list price for each copy of our net distribution of the book to book club members, i.e., members who pay for at least one club selection or alternate. Settlement of royalty fees will be made by us on a monthly basis, beginning one month after the start of our distribution of the books.

It is understood that we may distribute copies of J. S. SARGENT: PAINTINGS, DRAWINGS, WATERCOLORS as gifts or premiums and/or dividends to our regular subscribers in the usual course of our business. It is also understood that we may use the book for premium or gift purposes in connection with our advertising, and other methods of securing new members. Premium use refers to free distribution, and also current methods of obtaining new subscribers by offering a variety of individual titles for a nominal sum upon agreement to buy a specified number of books under our usual contract. We agree to pay you a royalty equal to one-half of the royalty and plate rental fee above set forth for copies so distributed.

We understand that HARPER & ROW, PUBLISHERS warrants that the above named book does not violate any copyright or other rights of ownership and contains no scandalous or libelous material or any such use of the name, portrait or picture of any person as may be unlawful or actionable, and agrees to hold Book-of-the-Month Club, Inc. harmless and indemnify it from and against any claim or claims that said book violates any copyright or other rights of ownership and/or contains defamatory or scandalous material or the unlawful

or actionable use of the name, portrait or picture of any person, and will at the expense of HARPER & ROW, PUBLISHERS, with attorneys satisfactory to Book-of-the-Month Club,Inc. defend any litigation which may be instituted against Book-of-the-Month Club, Inc. arising out of any such claim or claims.

Have to check Fiedler

You are to make arrangements for the Canadian book club rights to the book so that we can effect distribution to our Canadian members.

We agree not to remainder any copies of J. S. SARGENT: PAINTINGS, DRAWINGS, WATERCOLORS without first obtaining your permission to this effect. In the case of any copies remaindered, no royalty will of course be due on such copies. However, if we are able to negotiate a sale above cost we shall turn over to youthe profit so made.

Kindly acknowledge your acceptance of the above arrangements if they are agreeable to you.

Sincerely,

BOOK-OF-THE-MONTH CLUB, INC.
Lester Troob

LT:JB
enclosure